

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**SLEP-TONE ENTERTAINMENT
CORPORATION,**

Plaintiff,

v.

SHERRY EHLEY, et al.,

Defendants.

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Case No.: 2:11-CV-03409-HGD

MEMORANDUM OPINION

On July 18, 2013, the Magistrate Judge's Report and Recommendation was entered and the parties were allowed therein fourteen (14) days in which to file objections to the Recommendations made by the Magistrate Judge. On August 1, 2013, Defendant Jo-Rob, LLC ("Jo-Rob" or "Defendant"), filed objections to the Magistrate Judge's Report and Recommendation.

One of Defendant's objections is that the Magistrate Judge declined to dismiss Plaintiff's action against Defendant on the basis of improper joinder. Rule 21 of the Federal Rules of Civil Procedure clearly states that the misjoinder of parties is not a proper ground for dismissal of an action; however, the rule gives trial courts two alternative options for addressing instances of misjoinder—courts can either drop (*i.e.*, dismiss) an improperly joined party or sever any claims against an improperly joined party. Fed.R.Civ.P. 21. In the present case, the Magistrate Judge chose door number two: severance. The court finds no error in the Magistrate Judge's decision.¹

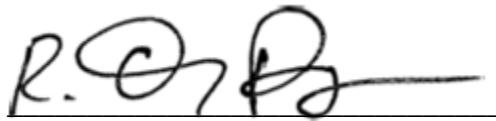
¹ However, before the court will entertain a new, separate action against Defendant Jo-Rob, LLC (the improperly joined defendant), Plaintiff must file a new complaint and pay the accompanying filing fee.

Defendant also objects that the Magistrate Judge incorrectly found that Plaintiff's trademarks are valid simply because they are registered. However, that argument is based upon a misreading of the Report and Recommendation. In the briefing on the Motion for Summary Judgment, no argument challenging the validity of Plaintiff's trademarks was raised by Defendant. To be sure, as noted by Defendant, no discovery has taken place, and Defendant states it has not had an opportunity to investigate and/or contest the allegations in the amended complaint. In addition, in ruling on a motion for summary judgment, a court is required to view the evidence in the light most favorable to the non-moving party, in this case, Plaintiff. Therefore, even if Defendant had raised a claim about the validity of Plaintiff's trademarks in its Motion for Summary Judgment, it is likely that any ruling on the Motion would have been postponed so that discovery on that claim could be conducted and the record further developed. Defendant has raised this new claim for the first time in its objections, and the court declines to consider this claim at this juncture. Because summary judgment is being denied as to those grounds actually asserted by Defendant in its Motion for Summary Judgment, Defendant will have the opportunity to conduct discovery and file a new Motion for Summary Judgment on whatever grounds it deems advisable, including any claim that Plaintiff's trademarks are invalid, at a later date.

After careful consideration of the record in this case and the Magistrate Judge's Report and Recommendation and Defendant's objections thereto, the court hereby **ADOPTS** the Report of the Magistrate Judge. The court further **ACCEPTS** the Recommendations of the Magistrate Judge.

Defendant Jo-Rob, LLC's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (Doc. #46)² is due to be rendered moot as to the Motion to Dismiss on the grounds of improper joinder, inasmuch as the court has severed the claims against Defendant Jo-Rob, LLC, from the claims by Plaintiff against the other defendants. Furthermore, Defendant's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment is due to be denied as to all other grounds asserted by Defendant its Motion for Summary Judgment because of the existence of genuine issues of material facts. A separate order in accordance with this Memorandum Opinion will be entered.

DONE and **ORDERED** on October 8, 2013.

A handwritten signature in black ink, appearing to read 'R. David Proctor', written over a horizontal line.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

² Defendant Jo-Rob, LLC, initially filed a Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, in response to Plaintiff's original complaint. (Doc. #31). After Plaintiff filed an amended complaint, Jo-Rob filed the Renewed Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (Doc. #46), which incorporates Defendant's previous Motion to Dismiss. (*Id.* at ¶ 4).